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ADMIRALTY. RULES OF PRACTICE

1.

PROCESS ON FILING LIBEL.

No mesne process shall issue from the district court in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall have been filed in the clerk's office from which such process is to issue. All process shall be served by the marshal or by his deputy, or, where he or they are interested, by some discreet and disinterested person appointed by the court.

2.

SUITS IN PERSONAM—PROCESS IN—ARREST IN SAME.

In suits *in personam* the mesne process shall be by a simple monition in the nature of a summons to appear and answer to the suit, or by a simple warrant of arrest of the person of the respondent in the nature of a *capias*, as the libellant may, in his libel or information pray for or elect; in either case with a clause therein to attach his goods and chattels, or credits and effects in the hands of the garnishees named in the libel to the amount sued for, if said respondent shall not be found within the District. But no warrant of arrest of the person of the respondent shall issue unless by special order of the court, on proof of the propriety thereof by affidavit or otherwise.

3.

BAIL—IMPRISONMENT FOR DEBT.

In all suits *in personam*, where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the State where an arrest is made on similar or analogous process issuing from the State court.

And imprisonment for debt, on process issuing out of the admiralty court, is abolished, in all cases where, by the laws of the State in which the court is held, imprisonment for debt has been, or shall be hereafter, abolished, on similar or analogous process issuing from a State court.

4.

BAIL IN SUITS IN PERSONAM.

The marshal shall take from the party arrested, as bail, either sufficient cash or a bond or stipulation in a sufficient sum, with sufficient sureties or an approved corporate surety, to be held by him to secure the appearance of the party so arrested in the suit. And upon such bond or stipulation summary process of execution shall be issued against the principal and sureties or corporate surety by the court to which the process is returnable.

5.

BOND IN ATTACHMENT SUITS IN PERSONAM.

In all suits *in personam*, where goods and chattels, or credits and effects, are attached under a process author-

izing the same, the attachment shall be dissolved by order of the court to which the process is returnable, on the giving of a bond or stipulation, with sufficient sureties, or an approved corporate surety, by the respondent whose property is so attached, or by someone on his behalf, conditioned to abide by all orders, interlocutory or final, of the court, and to pay the amount awarded by the final decree of the court to which the process is returnable, or in any appellate court, not exceeding, however, the value of the goods so attached with interest at six per centum per annum and costs; and upon such bond or stipulation, summary process of execution shall be issued against the principal and sureties or surety by the court to which the process is returnable, to enforce the final decree so rendered or on appeal by any appellate court.

6.

BONDS—STIPULATION—HOW GIVEN.

All bonds or stipulations in admiralty suits may be given and taken in open court, or at chambers, or before the clerk or a deputy clerk or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or before any commissioner of the United States authorized by law to take bail and affidavits in civil cases, or otherwise by written agreement of the parties or their proctors of record.

7.

BONDS—PREMIUMS—TAXABLE AS COSTS.

If costs shall be awarded by the Court to either or any party then the reasonable premiums or expense paid on

all bonds or stipulations or other security given by that party in that suit shall be taxed as part of the costs of that party.

8.

REDUCTION OF BAIL, BOND OR STIPULATION— NEW SURETIES.

In all suits either *in rem* or *in personam*, where bail is given or a bond or stipulation is taken, the court may, on motion, for due cause shown, reduce the amount of such bail or may reduce the amount of security given by either bond or stipulation; and in all cases, either *in rem* or *in personam*, where a bond or stipulation is given, if either of the sureties or the corporate surety shall be or become insufficient or the security for costs shall for any reason be insufficient pending the suit, new or additional security may be required by order of the court on motion.

9.

MONITION TO THIRD PARTIES IN SUITS IN REM.

In all suits *in rem* against a ship, and/or her appurtenances if her appurtenances or any of them are in the possession or custody of any third person, the court shall, on due notice to such third person and after hearing, decree that the same be delivered into the custody of the marshal or other proper officer, if on hearing it appears that the same is required by law and justice.

10.

PROCESS IN SUITS IN REM.

In all cases of seizure, and in other suits and proceedings *in rem*, the process, if issued and unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession for safe custody, and shall cause public notice thereof and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

11.

PERISHABLE GOODS—HOW DISPOSED OF.

In all cases where any goods or other things are arrested, if the expense of keeping the same is excessive or disproportionate, or if the same are perishable, or are liable to deterioration, decay, or injury, by being detained in custody pending the suit, the court may, on the application of either party, order the same or any portion thereof to be sold; and the proceeds, or so much thereof as shall be full security to satisfy any decree, to be brought into court to abide the event of the suit; or the court may, on the application of the claimant, order a delivery thereof to him, either on the filing of a written agreement of the parties or their proctors of record to that effect, or on a

due appraisement, to be had under its direction, unless the value has been agreed to in writing by the parties or their proctors of record, on the claimant's depositing in court so much money as the court shall order, or on his giving a stipulation, with sufficient sureties or an approved corporate surety, in such sum as the court shall direct or as shall be agreed upon in writing by the parties or their proctors of record, conditioned to abide by and pay the money awarded by the final decree rendered by the court, or any appellate court, if any appeal intervenes, not to exceed however in any event such agreed or appraised value with interest at six per cent. per annum and costs, as the one or the other course shall be ordered by the court.

12.

SHIP—HOW APPRAISED, SOLD OR BONDED.

Where any ship shall be arrested, the same shall, on the application of the claimant, be delivered to him either on a due appraisement, to be had under the direction of the court, or on his filing an agreement in writing to that effect signed by the parties or their proctors of record, and on the claimant's depositing in court so much money as the court shall order, or on his giving a stipulation for like amount, with sufficient sureties, or an approved corporate surety, conditioned as provided in the foregoing rule; and if the claimant shall unreasonably neglect to make any such application, then the court may, on the application of either party, on due cause shown, order a sale of such ship, and require the proceeds thereof to be brought into court or otherwise disposed of.

13.

SEAMEN'S WAGES—MATERIAL-MEN—
REMEDIES.

In all suits for mariners' wages or by material-men for supplies or repairs or other necessities, the libellant may proceed *in rem* against the ship and freight and/or *in personam* against any party liable.

14.

PILOTAGE—COLLISION—REMEDIES.

In all suits for pilotage or damage by collision, the libellant may proceed *in rem* against the ship and/or *in personam* against the master and/or the owner.

15.

ASSAULT OR BEATING—REMEDIES.

In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *in personam* only.

16.

MARITIME HYPOTHECATION—REMEDIES.

In all suits founded upon a mere maritime hypothecation of ship or freight, either express or implied, by the master for moneys taken up in a foreign port for supplies or repairs or other necessities for the voyage, without any claim of maritime interest, the libellant may proceed *in rem* and/or *in personam* against the master and/or the owners.

17.

BOTTOMRY BONDS—REMEDIES.

In all suits on bottomry bonds, properly so called, the suit shall be *in rem* only against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by its own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be *in personam* against the wrong-doer.

18.

SALVAGE—REMEDIES.

In all suits for salvage, the suit may be *in rem* against the property saved, or the proceeds thereof, and/or *in personam* against any party liable for the salvage service.

19.

PETITORY OR POSSESSORY SUITS.

In all petitory and possessory suits between part owners or adverse proprietors, or by the owners of a ship or the majority thereof, against the master of a ship, for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent,

or by one or more part owners against the others to obtain possession of the ship for any voyage, on giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

20.

EXECUTION ON DECREES.

In all cases of a final decree for the payment of money, the libellant shall have a writ of execution, in the nature of a *fiери facias*, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the respondent, claimant, or stipulators. And any other remedies shall be available that may exist under the State or Federal law for the enforcement of judgments or decrees.

21.

REQUISITES OF LIBEL OF INFORMATION.

All informations and libels of information upon seizures for any breach of the revenue, or navigation or other laws of the United States, shall state the place of seizure, whether it be on land or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute

or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at the return-day of the process why the forfeiture should not be decreed.

22.

REQUISITES OF LIBEL IN INSTANCE CAUSES.

All libels in instance causes, civil or maritime, shall be on oath or solemn affirmation and shall state the nature of the cause, as, for example, that it is a cause, civil and maritime, of contract, or a tort or damage, or of salvage, or of possession, or otherwise, as the same may be; and, if the libel be *in rem*, that the property is within the district; and, if *in personam*, the names and places of residence of the parties so far as known. The libel shall also propound and allege in distinct articles the various allegations of fact upon which the libellant relies in support of his suit, so that the respondent or claimant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer for due process to enforce his rights *in rem*, or *in personam*, as the case may be, and for such relief and redress as the court is competent to give in the premises.

23.

AMENDMENTS TO LIBELS.

In all informations and libels in causes of admiralty and maritime jurisdiction, amendments in matters of form

may be made at any time, on motion to the court, as of course. And new counts may be filed, and amendments in matters of substance may be made, on motion, at any time before the final decree, on such terms as the court shall impose. And where any defect of form is set down by the respondent or claimant upon special exceptions, and is allowed, the court may, in granting leave to amend, impose terms on the libellant.

24.

STIPULATIONS FOR COSTS.

In all cases the court may, on the filing of a libel or on the appearance of any respondent, or claimant, or at any other time, require the libellant, respondent or claimant, or either of them to give a stipulation or an additional stipulation with sufficient sureties, or an approved corporate surety, in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him, it, or them, by the final decree of the court, or by any interlocutory order in the progress of the suit, or an appeal by any appellate court.

25.

CLAIM—HOW VERIFIED—CLAIMANT'S BONDS.

In suits *in rem* the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made is the true and bona fide owner. And where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or, if the

property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And, on putting in such claim, the claimant shall file a bond or stipulation for costs as above provided.

26.

ANSWERS—REQUISITES OF.

In all libels in causes of civil and maritime jurisdiction, whether *in rem* or *in personam*, the answers of or on behalf of the respondent or claimant to the libels and interrogatories shall be on oath or solemn affirmation; and all answers shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner or except to each interrogatory propounded by the libellant. But this rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the District Court shall be of opinion that the proceedings prescribed herein are necessary for the purposes of justice in the case before the court.

27.

PLEADINGS—INTERROGATORIES—
EXCEPTIONS TO.

Either party may except to the sufficiency, fullness, distinctness, relevancy or competency of any of the pleadings or interrogatories filed by the other party; and if the court shall so adjudge on a hearing on the exceptions, and

shall order further pleadings or answers to be filed by either party, such pleadings or answers shall be filed within such time and on such terms as the court may direct.

28.

DEFAULT ON FAILURE TO ANSWER.

If the respondent or claimant shall omit or refuse to make due answer to the libel upon the return-day of the process, or other day assigned by the court, the court may pronounce him to be in contumacy and default and thereupon shall proceed to hear the cause *ex parte*, and adjudge therein as to law and justice shall appertain. But the court may set aside the default, and upon the application of the respondent or claimant admit him to make answer to the libel on such terms as the court may direct.

29.

EFFECT OF FAILURE TO ANSWER FULLY.

In all cases where the respondent or claimant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment or otherwise, compel the respondent or claimant to make further answer thereto; or may make such other order in the cause as it shall deem most fit to promote justice.

30.

WHAT EITHER PARTY MAY OBJECT TO
ANSWERING.

Either party may object by proper pleadings to answering any allegation contained in any pleading or interrogatory filed by the other party, which will tend to expose him, it, or them, to any prosecution or punishment for crime, or for any penalty or any forfeiture of his, its or their property for any penal offense.

31.

INTERROGATORIES MAY BE REQUIRED TO BE
ANSWERED UNDER OATH.

Either party shall have the right to require the personal answer of the other party or of its proper officer on oath or solemn affirmation to all interrogatories propounded by him, it, or them, in the libel, answer or otherwise as may be ordered by the court on cause shown and required to be answered. In default of due answer by either party to such interrogatories, the court may adjudge such party to be in default and enter such order in the cause as it shall deem most fit to promote justice.

32.

DISCOVERY OF DOCUMENTS BEFORE TRIAL.

After joinder of issue, and before trial, any party may apply to the court for an order directing any other party, his agent or representative, to make discovery, on oath, of

any documents which are, or have been, in his possession or power, relating to any matter or question in issue. And the court may order the production, by any party, his agent or representative, on oath, of such of the documents in his possession or power relating to any matter in question in the cause as the court shall think right, and the court may deal with such documents, when produced, in such manner as shall appear just.

33.

HOW VERIFICATION OF ANSWER TO INTERROGATORY OBTAINED.

Where either the libellant or the respondent or claimant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the respondent or claimant when and as soon as it may be practicable or may receive a verification by agent or attorney with like force and effect as if made by the party.

34.

HOW THIRD PARTY MAY INTERVENE.

If any third person shall intervene in any cause of admiralty and maritime jurisdiction *in rem* for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard therein, he shall pro-

pound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required, by order of the court, to make due answer; and such further proceedings shall be had and decree rendered by the court therein as to law and justice shall appertain. But every such intervénor shall be required, on filing his allegations, to give a stipulation with sufficient sureties or an approved corporate surety to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded against him by the court on the final decree, whether it is rendered in the original or appellate court, not to exceed however in any event the agreed or appraised value of the property so claimed by him, it, or them, with interest at six per cent. per annum and costs.

35.

EXCEPTIONS TO PLEADINGS FOR SURPLUSAGE OR SCANDAL.

Exceptions may be taken to any libel, allegation, answer or other pleading for surplusage, impertinence or scandal; and if on hearing the matter excepted to shall be held to be so objectionable it shall be expunged on such terms as the court may direct.

36.

PROCEDURE AGAINST GARNISHEE.

In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation as to

the debts, credits, or effects of the respondent or claimant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or neglect so to do, the court may award compulsory process *in personam* against him. If he admits any debts, credits or effects, the same shall be held in his hands, or paid into the registry of the court and shall be held in either case subject to the further order of the court.

37.

BRINGING FUNDS INTO COURT.

In cases of mariners' wages, or bottomry, or salvage, or other proceeding *in rem*, where freight or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the court may, on due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit, and if no cause be shown, the court may order the same to be brought into court to answer the exigency of the suit, and on failure of the party to comply with the order, may award an attachment, or other compulsory process to compel obedience thereto.

38.

DISMISSAL FOR FAILURE TO PROSECUTE.

If, in any admiralty suit, the libellant shall not appear and prosecute his suit, and comply with the orders of the

court, he shall be deemed in default and contumacy; and the court may, on the application of the respondent or claimant, pronounce the suit to be deserted, and the same may be dismissed with costs.

39.

REOPENING DEFAULT DECREES.

The court may, in its discretion, on motion of the respondent or claimant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within sixty days after the decree has been entered, the respondent or claimant submitting to such further orders and terms in the premises as the court may direct; and the term of the court shall be deemed extended for this purpose until the expiration of such period of sixty days.

SALES IN ADMIRALTY.

All sales of property under any decree of admiralty shall be made by the marshal or his deputy, or other proper officer assigned by the court, where the marshal is a party in interest, in pursuance of the orders of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

41.

FUNDS IN COURT REGISTRY.

All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name of the court, and shall not be drawn out, except by a check or checks signed by a judge of the court and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a memorandum and copy of all of the checks so drawn and the date thereof.

42.

CLAIMS AGAINST PROCEEDS IN REGISTRY.

Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceedings, to intervene *pro interesse suo* for delivery thereof to him, and on due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or on a hearing, be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

43.

REFERENCE TO COMMISSIONERS.

In cases where the court shall deem it expedient or necessary for the purposes of justice, it may refer any

matters arising in the progress of the suit to one or two commissioners or assessors, to be appointed by the court, to hear the parties and make a report therein. And such commissioners or assessors shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in references to them, including the power to administer oaths to and examine the parties and witnesses touching the premises.

44.

RIGHT OF TRIAL COURTS TO MAKE RULES
OF PRACTICE.

In suits in admiralty in all cases not provided for by these rules or by statute, the district courts are to regulate their practice in such a manner as they deem most expedient for the due administration of justice, provided the same are not inconsistent with these rules.

45.

FURTHER PROOF ON APPEAL.

Further proof taken by leave of a circuit court of appeals or the Supreme Court on an appeal in admiralty shall be taken in such manner as may be prescribed by statute or by said court.

46.

EVIDENCE—HOW TAKEN.

In all trials in admiralty the testimony of witnesses shall be taken orally in open court, except as otherwise provided

by statute, or agreement of parties. When deemed necessary by the court or the officer taking the testimony or by the parties, a stenographer may be employed who shall take down the testimony in shorthand or otherwise and, if requested by the court or either party, transcribe the same. The fees may be fixed by the court and taxed as costs.

47.

COSTS—TRAVEL OF WITNESSES.

Traveling expenses of any witness for more than one hundred miles to and from the Court or place of taking the testimony shall not be taxed as costs.

48.

ISSUE ON NEW FACTS IN ANSWER.

When the respondent or claimant in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication or reply, general or special, shall be filed, unless ordered by the court on proper cause shown. But within such time after the answer is filed as shall be fixed by the district court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain or add to, the new matters set forth in the answer; and within such time as may be fixed, in like manner, the respondent or claimant shall answer such amendments.

49.

RECORD ON APPEAL.

The Clerks of the District Courts shall make up the records to be transmitted to the Circuit Court of Appeals.

I. They shall contain the following:

A. The style of the court.

B. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.

C. If bail was taken, or property was attached or arrested, the process of the arrest or attachment and the service thereof, all bail and stipulations, and, if any sale has been made, the orders, warrants, and reports relating thereto.

D. The libel, with exhibits annexed thereto.

E. The pleadings of the respondent or claimant with the exhibits annexed thereto.

F. The testimony as taken on the part of the libellant, and any exhibits not annexed to the libel.

G. The testimony as taken on the part of the respondent or claimant and any exhibits not annexed to his pleadings.

H. Any orders and opinions of the court.

I. Any report of a commissioner or assessor, if excepted to, with the orders of the court respecting the

same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the commissioner or assessor are to be stated.

J. The final decree.

K. The notice of or prayer for an appeal, and the assignment of errors.

II. The following shall be omitted:

A. The continuances.

B. All motions, rules, and orders which are merely preparatory for trial and to which no exception was taken or error assigned.

C. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the District Court was founded on some one or more of these; in which case so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness, and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to; and in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

III. The Clerk of the District Court shall page the copy of the record thus made up, and shall make an index
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thereto, and he shall certify the entire document at the end thereof under the seal of the court, to be a transcript of the record of the District Court in the cause named at the beginning of the copy made up pursuant to this rule.

IV. In making up the record to be transmitted to the Circuit Court of Appeals, the Clerk of the District Court shall omit therefrom any of the pleadings, testimony or exhibits which the parties, by their proctors, shall, by written stipulation, agree may be omitted; and shall receive and include in the record any statement of the case which may be signed by the proctors showing how the questions arose and were decided in the District Court and setting forth so much only of the facts alleged and proved, or sought to be proved, or of the evidence thereof, as is essential to a decision of such question by the Appellate Court, and such stipulation and statement shall be filed and certified up with the record.

50.

SECURITY ON CROSS-LIBEL.

Whenever a cross-libel is filed upon any counterclaim arising out of the same contract or cause of action for which the original libel was filed, and the respondent or claimant in the original suit shall have given security to respond in damages, the respondent in the cross-libel shall give security in the usual amount and form to respond in damages to the claims set forth in said cross-libel, unless the court, for cause shown, shall otherwise direct; and all proceedings on the original libel shall be stayed until such security be given unless the court otherwise directs.

51.

LIMITATION OF LIABILITY—HOW CLAIMED.

When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, or for any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of March 3, 1851, entitled "An Act to limit the liability of shipowners and for other purposes" now embodied in sections 4283 to 4285 of the Revised Statutes, as now or hereafter amended or supplemented, the said owner or owners shall and may file a libel or petition in the proper district court of the United States, as hereinafter specified, setting forth the facts and circumstances on which said limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisal to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation with sufficient sureties or an approved corporate surety for the payment thereof into court with interest at the rate of six per cent. per annum from the date of said stipulation and costs, whenever the same shall

be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisalment make an order for the transfer by him or them of his or their interest in such vessel and freight to a trustee to be appointed by the court under the fourth section of said act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage or injury, citing them to appear before the said court and file their respective claims at or before a certain time to be named in said writ, not less than thirty days from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice served through the post office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect to any such claim or claims.

52.

PROOF OF CLAIMS IN LIMITED LIABILITY PROCEDURE.

Proof of all claims which shall be filed in pursuance of said monition shall thereafter be made before a commissioner to be designated by the court, or before the court as the court may determine, subject to the right of any person interested to question or controvert the same; and on the completion of said proofs, the commissioner shall make report, or the court its finding on the claims so

proven, and on confirmation of said commissioner's report, after hearing any exceptions thereto, or on such finding by the court, the moneys paid or secured to be paid into court as aforesaid, or the proceeds of said ship or vessel and freight (after payment of costs and expense) shall be divided pro rata amongst the several claimants in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

53.

DEFENSE TO CLAIMS IN LIMITED LIABILITY
PROCEDURE.

In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel for said embezzlement, loss, destruction, damage or injury (independently of the limitation of liability claimed under said act), provided he, it or they shall have complied with the requirements of Rule fifty-one and shall also have given a bond for costs and provided that, in his or their libel or petition, he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have filed his or their claim under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said act of Congress, or both, provided such answer

shall in suitable allegations state the facts and circumstances by reason of which liability is claimed or right to limitation of liability should be denied.

54.

COURTS HAVING COGNIZANCE OF LIMITED LIABILITY PROCEDURE.

The said libel or petition shall be filed and the said proceedings had in any district court of the United States in which said ship or vessel may be libeled to answer for any such embezzlement, loss, destruction, damage or injury; or, if the said ship or vessel be not libeled, then in the district court for any district in which the said owner or owners may be sued in that behalf; when the said ship or vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner or owners, or has been commenced in a district other than that in which the said ship or vessel may be, the said proceedings may be had in the district court of the district in which the said ship or vessel may be, and where it may be subject to the control of such court for the purposes of the case as hereinbefore provided. If the ship shall have already been libeled or sold, the proceeds shall represent the same for the purposes of these rules.

55.

APPEALS IN LIMITED LIABILITY CASES.

All the preceding rules and regulations for proceeding in causes where the owner or owners of a ship or vessel

shall desire to claim the benefit of limitation of liability provided for in the act of Congress in that behalf, shall apply to the Circuit Courts of Appeals of the United States where such cases are or shall be pending in said courts on appeal from the District Courts.

56.

RIGHT TO BRING IN PARTY JOINTLY LIABLE.

In any suit, whether *in rem* or *in personam*, the claimant or respondent (as the case may be) shall be entitled to bring in any other vessel or person (individual or corporation) who may be partly or wholly liable either to the libellant or to such claimant or respondent by way of remedy over, contribution or otherwise, growing out of the same matter. This shall be done by petition, on oath, presented before or at the time of answering the libel, or at any later time during the progress of the cause that the court may allow. Such petition shall contain suitable allegations showing such liability, and the particulars thereof, and that such other vessel or person ought to be proceeded against in the same suit for such damage, and shall pray that process be issued against such vessel or person to that end. Thereupon such process shall issue, and if duly served, such suit shall proceed as if such vessel or person had been originally proceeded against; the other parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon

filing his petition, give a stipulation, with sufficient sureties, or an approved corporate surety, to pay the libellant and to any claimant or any new party brought in by virtue of such process, all such costs, damages, and expenses as shall be awarded against the petitioner by the court on the final decree, whether rendered in the original or appellate court; and any such claimant or new party shall give the same bonds or stipulations which are required in the like cases from parties brought in under process issued on the prayer of a libellant.

57.

PROPERTY IN CUSTODY OF MARSHAL.

No property in the custody of the marshal or other officer of the court shall be delivered up without an order of the court but, except in possessory actions, such order may be entered, as of course, by the clerk, on the filing of either a written consent thereto by the proctor on whose behalf it is detained, or an approved stipulation or bond given as provided by law and these rules; or upon the dismissal or discontinuance of the libel; except that in proceedings under Section 941 of the Revised Statutes the marshal shall not deliver any property so released until the costs and charges of the officers of the court shall first have been paid into the court by the party receiving such property subject to the decision of the court with respect to the amount of costs due such officers.

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6. *Id. Following State Courts.* In determining whether such exemption was a privilege or contract right, this court inclines to follow state tribunals. *Id.*

7. *Bridge Companies; Charter Rights; Tolls.* In action for penalties for failure to construct foot and carriage ways on railway bridge as required by act amending charter, it is premature to inquire whether provision reducing tolls on such ways impairs contract obligation. *International Bridge Co. v. New York*. 126

8. *Id. Reserved Power over Charter.* Where New York and Canadian companies, after consolidation, constructed bridge over Niagara River for railroad uses only, *held*, that new company had no contract immunity from being required to add foot and carriage ways in New York, as contemplated by both original charters, irrespective of whether the duty, expressed positively in the Canadian charter, attached to the consolidation in New York. *Id.*

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4. *Change of State Regulations.* Right to enforce legitimate public policy includes right to change regulations for that purpose, even to making of changes in conflict with arrangements made by individuals in reliance on previous regulations. *Thornton v. Duffy* . . . 361

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of contributing to state insurance fund, but afterwards took it away from employers who insured themselves, *held* that change did not impair property rights of employer who had elected to pay directly and had insured himself before change was made. *Id.*

6. *Natural Gas; Conservation.* State may prohibit use of natural gas for manufacturing carbon without fully utilizing heat for other manufacturing or domestic purposes. *Walls v. Midland Carbon Co.* 300

7. *Id.* So *held* over objection that investment would be destroyed and manufacture would be impracticable if heat were utilized as prescribed. *Id.*

8. *Id.* State may prevent disproportionate use by landowner to protect equal rights of others and to conserve gas as a resource of the State. *Id.*

9. *Id.* That plaintiff's product may be sold for more than gas consumed in its manufacture would bring for fuel purposes, is no ground for denying state power. *Id.*

10. *Railroad Crossings.* State may abolish grade crossings, whether laid out before or after construction of railroad, and may place upon company expense of running streets over or beneath tracks, if it desires to continue operating. *Erie R. R. v. Public Utility Commrs.* 394

11. *Id. Conflicting Interests.* Interest of public using streets is paramount to that of railroad and public using them; State may require streets to be kept free of danger whatever cost to parties introducing it. *Id.*

12. *Id.* Authority so exercised is an obvious case of police power; or it may be regarded as authority impliedly reserved when State granted right to occupy the land. *Id.*

13. *Id. Operation at a Loss* cannot be required. *Id.*

14. *Id. Requiring Ruinous Expenditure.* That plan will involve expenditures so heavy as to impair efficiency of railroad or even lead to bankruptcy, does not bring State's order into conflict with due process clause. *Id.*

15. *Id. Private Sidings.* Rights of railroad in respect of private sidings are no greater than those in respect of main line. *Id.*

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16. *Id. Operating Lessee.* Burden of changes may be laid on, without regard to financial ability of lessors to compensate if leases terminated. *Id.*

17. *Id. Apportionment of Expense.* Railroad cannot complain that only 10 per cent. is cast upon street railway as to streets used by latter. *Id.*

18. *Id. Reasonableness. Finding of Danger,* by state board, confirmed by state courts, if reasonable, must stand. *Id.*

19. *Id. Delegation of Legislative Power, Subject to Judicial Review.* Constitutional aspect of changes ordered at grade crossings is same whether state board was obliged to order them upon finding danger or had a discretion in the matter, under state law. *Id.*

20. *Id. Street Railway,* crossing tracks of steam road at grade, increases danger; may be required to bear part of expense of removal. *Id.*

21. *Id. Water Companies.* May constitutionally be required to adjust pipes at their own expense. *Id.*

22. *Id. Telegraph Companies.* Changes involving expense in adjusting lines at crossings do not infringe rights under Amendment. *Id.*

23. *Id. Private Sidings.* Order not invalid because it will dislocate private sidings and put their owners to expense. *Id.*

24. *Railroads; Right to Dismantle; Consent of State.* Apart from statute or express contract, those who invest in a railroad, though built under charter and eminent domain power, are not bound to go on operating at a loss; right to stop not dependent on consent of State. *Bullock v. R. R. Comm. of Florida.* 513

25. *Id. Foreclosure; Rights of Mortgagee.* Where state Supreme Court prohibited lower court from confirming sale with liberty to purchaser to dismantle, on ground that State was not a party, *held* that prohibition could not affect rights of mortgagee, since right to dismantle, as against State, could not be conferred by foreclosure decree in the State's absence, and would pass to purchaser, if it existed, whether decree so provided or not. *Id.*

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26. *Bridge Companies; Charter Rights; Tolls; Reserved Power of State.* Requiring company constructing international railroad bridge to add foot and carriage ways, as contemplated by charter, *held* not to violate Amendment in absence of showing that additions would not yield reasonable return. *International Bridge Co. v. New York* 126

27. *Dog License Fees.* State may require payment, under penalty of fine. *Nicchia v. New York* 228

28. *Id. Enforcement; Private Agency.* Exercise of power through private corporation created to aid in enforcement of laws for prevention of cruelty to animals, with power to issue licenses, collect fees and apply them toward its expenses. *Id.*

29. *Income Tax; Foreign Corporations.* In considering whether tax on locally-earned income reaches income earned outside State, it is not necessary to decide whether it is a direct tax on income or an excise measured by income. *Underwood Typewriter Co. v. Chamberlain.* 113

30. *Id. Computing Tax; Earnings Within and Without State.* Tax on income of corporation manufacturing within State but deriving greater part of receipts from sales outside, computed by taking proportion of total net income which value of real and personal tangible property within bears to that outside, *held* not unreasonable. *Id.*

31. *Id.* Fact that amount of net income allocated to taxing State greatly exceeded portion actually received there, does not prove that income earned outside was included in assessment. *Id.*

(3) *Equal Protection of the Laws.* See 6-9, 29-31, *supra*.

32. *Classification. Natural Resources.* A statute prohibiting use of natural gas for manufacturing carbon without fully utilizing heat for other manufacturing or domestic purposes, where source of supply is within 10 miles of an incorporated town or industrial plant, *held* reasonable. *Walls v. Midland Carbon Co.* 300

33. *Id.* Validity of regulation cannot depend upon relative values or importance of industries favorably and unfavorably affected by it, or their relations to the welfare of State, these being matters for judgment of state legislature. *Id.*

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34. *Id. Inheritance Tax.* State may distinguish between property which has borne fair share of tax burden in decedent's lifetime and property of same kind which has not. *Watson v. State Comptroller*. 122

35. *Id. Transfer of Securities.* Additional tax on transfer of certain kinds of securities held by decedent at his death on which neither general property tax nor alternative stamp tax has been paid during fixed period prior thereto, *held* reasonable. *Id.*

36. *Foreign Corporations; Income Tax; Discrimination.* Principle that State may not impose discriminatory tax on sister-state corporation which had made permanent investments in State before law was enacted, *held* inapplicable to case involving non-discriminatory tax on locally-earned income of manufacturing corporation. *Underwood Typewriter Co. v. Chamberlain*. 113

37. *Abolishing Grade Crossings; Apportioning Expense.* Where State orders removal of grade crossings, a water company, which is required to adjust pipes at its own expense, is not denied equal protection as compared with street railroad required to pay 10 per cent. of expense of crossing, presumably more than expense of merely readjusting its tracks. *Erie R. R. v. Public Utility Commrs.*. 394

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1. *Non-Maritime*. Contracts for construction of ships are non-maritime and not within admiralty jurisdiction; rule applies to contracts for work and material necessary to finish partly constructed vessel which had been launched. *Thames Co. v. The "Francis McDonald"* 242

2. *Government Work; Suspension; Damages*. Where contract gave Government power to suspend where necessary for purpose or advantage of work, permitted it to change materials, and, besides providing against claims for damages on account of such changes, declared that no claim should be allowed contractor for damages arising out of any delay caused by Government, *held*, that a delay ordered to await appropriation by Congress for substituted materials and another in anticipation of passage of postal law because of which plans were altered, would not support claim for damages. *Wells Bros. Co. v. United States* 83

3. *United States; Taking of Property*. Contract Implied is to pay for property actually taken. *Bothwell v. United States* 231

4. *Id.* Where construction of dam flooded private land, destroyed owner's hay there stored and forced him to remove and sell cattle, *held*, assuming an implied obligation to

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pay for hay, there was none to pay loss due to forced sale of cattle. *Id.*

5. *Id.* Obligation to pay not implied from destruction of anti-hog-cholera serum by officers, without agreement to purchase; nor from Act of 1915 authorizing Secretary of Agriculture to expend money in eradication of animal disease, including payment of claims growing out of purchase and destruction of exposed materials. *Great Western Serum Co. v. United States* 240

6. *Use of Patented Devices; No Contract to Pay* implied from appropriation acts evincing willingness of Congress to expend money in testing devices, but no intention to pay until their usefulness should be proved. *Haupt v. United States*. 272

7. *Loss Attributable to Mistake of Claimant.* Where shipments of newspapers which owner supposed were going by express at lower rates were in fact sent by mail, at higher but legal postal rates, through oversight of its agents, *held*, that United States was under no implied contract to reimburse it. *Journal & Tribune Co. v. United States* 581

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1. *Sale of Property; Rights of Shareholders.* Where business unprofitable and corporation cannot pay debts and continue, though it is not insolvent, majority shareholders may authorize sale of all corporate property for adequate consideration, and distribute net proceeds after payment of debts, over objection of minority. *Geddes v. Anaconda Mining Co.* 590

2. *Id. Adequacy of Consideration.* Such sale will not be set aside because consideration is shares in another corporation, if such shares have established market value and shareholders receiving them may convert them into cash consideration adequate for their interest in corporate property sold. *Id.*

3. *Id. Common Directors; Burden of Proof.* Where minority seek to set aside sale to another corporation negotiated by boards of directors having a member in common, burden is on those who would maintain transaction to show fairness and adequacy of consideration. *Id.*

4. *Id. Concurrent Findings*, of lower courts, that consideration was inadequate, accepted by this court. *Id.*

5. *Id. Public Auction.* When it appears from evidence that consideration was inadequate, court is not justified in affirming transaction merely because no greater amount is bid at public auction. *Id.*

6. *Id. Setting Aside Sale.* In suit to set aside sale for inadequacy of consideration, held that, under pleadings, the court, having found price inadequate, should have set sale aside, and was without power to depart from parties' contract by selling property at auction for cash price found adequate. *Id.*

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sales companies created and controlled by railroad company, whereby sales company agreed to buy all coal produced by coal company at fixed percentage of New York prices and not to buy or sell coal except that purchased from coal company, *held* a mere device to evade commodities clause and violative of Anti-Trust Act. *United States v. Lehigh Valley R. R.* 255

8. *Emergency Fleet Corporation.* Though all its stock is owned by United States, it is a separate entity. *United States v. Strang* 491

9. *Id. Agents.* Inspector employed by Fleet Corporation is not an agent of United States, within Crim. Code, § 41. *Id.*

10. *Stockholders.* Generally agents of a corporation are not agents for stockholders and cannot contract for them. *Id.*

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2. *Pawnbrokers; Engaging in Business Without License*. Act of 1913, prohibiting business in District of Columbia, without license, is violated where part of transaction occurs outside the jurisdiction. *Id.*

3. *Instructions; Verdict of Guilty*. When undisputed facts establish offense charged, the judge may instruct jurors that, while they cannot be constrained to return a verdict of guilty, it is their duty to do so. *Id.*

4. *Id. Harmless Error*. When cured by § 269, Jud. Code, in a case of admitted facts. *Id.*

5. *Unlawful Landing of Aliens*. Indictment, for unlawfully bringing in Chinese aliens, will lie under § 8 of Immigration Act of 1917, where acts charged do not amount to a landing in violation of § 11 of Chinese Exclusion Act of 1884. *United States v. Butt* 38

6. *Anti-Narcotic Act; Indictment; Surplusage; Principals*. Where indictment charges unlawful selling by issuing a prescription, the clause as to issuing prescription, being intimately involved in description of offense, cannot be treated as surplusage, but it is not repugnant to charge of selling, since under the act one may take a principal part in a prohibited sale of morphine belonging to another by issuing a prescription for it, and Crim. Code, § 332, makes whoever aids, abets, etc., the commission of an offense a principal. *Jin Fuey Moy v. United States* 189

7. *Id. Professional Practice*. Immunity of § 2 (a) of act is confined strictly within appropriate bounds of a physician's professional practice; it does not permit sales to dealers or distributions intended to satisfy appetites of persons addicted to use of drugs. *Id.*

8. *Conspiracy; Crim. Code, § 19*, does not embrace conspiract to deprive citizens of right to remain in particular State, by seizing and deporting them to another State. *United States v. Wheeler* 281

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1. *Legal Entity.* Fleet Corporation, though all stock owned
by United States, is a separate entity. *United States v.*
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2. *Agents; Crim. Code, § 41.* Inspector employed by Fleet
Corporation is not an agent of United States. *Id.*

EMINENT DOMAIN. See *Carriers*, 9; *Claims*, 1, 2.

EMPLOYER AND EMPLOYEE. See *Anti-Trust Act*, 6-15;
Emergency Fleet Corporation, 2; *Employers' Liability*
Act; *Master and Servant*; *Negligence*, 1.

Workmen's compensation. See *Constitutional Law*, IV,
4; IX, 5.

Contracts; protection by injunction. See *Equity*, 4.

EMPLOYERS' LIABILITY ACT. See *Master and Servant*.

1. *Assumption of Risk.* Bars action; does not, like con-
tributory negligence, go to reduction of damages. *Pryor v.*
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2. *Id. State Law Inapplicable.* Decision, applying local construction of common law, that risk of injury from defective tool was attributable to master's negligence, and that plaintiff did not assume it but was guilty of contributory negligence, *held* erroneous. *Id.*

3. *Employees Not Within Act; Express Companies.* Contract for conducting express business over lines of railroad, under which express company assumed risk of injury to its employees engaged in work on trains of railroad company and agreed to indemnify latter against claims for injuries, constitutes business of express company distinct from that of railroad, not a partnership, so that employee of former is not an employee of latter within federal act. *Wells Fargo & Co. v. Taylor*. 175

4. *Id. "Common Carriers by Railroad."* Act does not embrace express company conducting business under such arrangement. *Id.*

5. *Id. Contract of Employment; Assumption of Risk; Enforcing Obligation.* Express messenger, who, as condition to employment, assented to such arrangement and agreed to assume risk, and was injured by negligence of railroad, *held* bound not to assert liability against either company. *Id.*

ENEMIES. See **Alien Enemies.**

EQUAL PROTECTION OF THE LAWS. See **Constitutional Law**, IX (3).

EQUITY. See **Judgments**, 8; **Pleading**; **Trusts and Trustees.**

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Id. United States; enjoining rights under leases of restricted allotments. See **Indians**, 8.

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1. *Injunction; Trade-marks; Defense of Fraud and Unclean Hands.* That trade-mark and advertisements convey fraudulent representations to public affords but a narrow ground for refusing relief against infringer who seeks to reap advantages of plaintiff's good will. *Coca-Cola Co. v. Koke Co.* 143
2. *Id.* As respects this defense, plaintiff's position must be judged by facts when suit was begun, not by facts of a different condition and earlier time. *Id.*
3. *Id.* Use of "Coca-Cola" with accompanying pictures on labels, held not to constitute fraud depriving plaintiff of right to enjoin infringement and unfair competition in selling like product under name of "Koke." *Id.*
4. *Id.* *Protection of Contracts of Employment.* In suit by corporation against its subsidiary and former employees of latter and their labor unions, wherein plaintiff sought to enjoin molestation of workmen of, and interference with performance of contract with plaintiff for manufacture of Government supplies by, defendant corporation, held that plaintiff's right was a right to protect from interference the contract between the defendant corporation and its workmen. *Niles-Bement-Pond Co. v. Iron Moulders Union* . . . 77
5. *Id.* *Enforcement of State Judgment.* *Jud. Code*, § 265, does not forbid enjoining collection of judgment obtained in state court where its enforcement would be contrary to equity and good conscience. *Wells Fargo & Co. v. Taylor* . . 175
6. *Id.* Obligation of messenger, under contract of employment, not to assert liability for injury against either express or railroad company, enforced by suit in District Court to enjoin collection of judgment obtained in state court. *Id.*

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Of gift or loan. See **Bankruptcy Act**, 7.

Of invention. See **Patents for Inventions**, 5.

Of monopoly. See **Anti-Trust Act**, 4.

Of trust. See **Trusts and Trustees**, 9.

1. *Burden of Proof; Intent to Evade Jurisdiction.* In action for damages for mental anguish caused by mistake in transmission of telegram, where message was routed through another State to destination in State of origin, *held*, that if motive to evade state jurisdiction, by making the transaction interstate commerce, were material, it was error to lay burden on defendant of disproving it. *Western Union Tel. Co. v. Speight* 17

2. *Id. Attacking Legality of Tax.* Necessity of proving illegality to recover money voluntarily paid; mere assertion and speculation may not be relied upon. *Cochran v. United States*. 387

3. *Id. Inadequacy of Consideration; Interested Director.* Where minority shareholders of corporation seek to set aside sale of its property to another corporation negotiated by boards of directors having a member in common, burden is upon those who would maintain transaction to show its entire fairness and adequacy of consideration. *Geddes v. Anaconda Mining Co.* 590

4. *Id.* Where it appears from evidence that consideration was inadequate, court is not justified in affirming transaction merely because no greater amount is bid upon offering property at public auction. *Id.*

5. *Foreign Law.* Whether or not Panama law as to negligence and damages for pain should be judicially noticed by District Court for Canal Zone, in case involving injuries

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suffered in Panama, *held*, that defendant was not harmed by leaving it to be determined by jury on conflicting evidence of experts. — *Panama R. R. v. Pigott*..... 552

6. *Witnesses; Competency; Husband and Wife.* In criminal prosecution in federal court in Pennsylvania, defendant's wife is not competent to testify for her husband either generally or by contradicting testimony that certain matters transpired in her presence. *Jin Fuey Moy v. United States* 189

EXCEPTIONS:

1. *Errors of Law.* Rule that errors of law by trial court cannot be considered on writ of error unless raised by bill of exceptions, has no application upon review of a judgment of the Supreme Court of Porto Rico, although that court has power to review evidence and make new findings of fact. *Ana Maria Sugar Co. v. Quinones*..... 245

2. *Id. Record.* Such rulings are part of record and need not be excepted to. *Id.*

EXCISE TAXES. See **Constitutional Law**, IX, 29-31, 36.

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Murder within reservation; objection held not to raise jurisdictional question. See *Jurisdiction*, IV, 3.

1. *Creek Allotment, in Name of Decedent; Alienation by Full-blood Heirs.* Lands of Indian who died after enrollment and before allotment and which were thereafter allotted in his name under Act of 1906, descend to his heirs, not as direct allotment but as an inheritance; alienability by full bloods is determined, not by provisions of Acts of 1906 and 1908 respecting allotments to living allottees, but by those governing alienability by heirs. *Harris v. Bell* 103

2. *Id. Intent of Congress*, and not usual distinction between title by purchase and by descent, controls. *Id.*

3. *Id. Approval by Secretary of Interior.* Power, under Act of 1906, to approve conveyances by adult full-blood heirs, was not recalled by Act of 1908, as to conveyances made, though not approved, before its enactment; lapse of 2 1/2 years between deed and its approval does not affect validity of conveyance in absence of lawful intervening disposal. *Id.*

4. *Id. Approval by Court; Act of 1908, § 9*, providing that no conveyance of interest of full-blood Indian heir shall be valid unless approved by court having jurisdiction of settlement of estate of deceased allottee, prescribes rule for future conveyances. *Id.*

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5. *Id.* *Minors; Probate Courts; Act of 1908, § 6*, subjecting persons and property to jurisdiction of probate courts of Oklahoma, does not affect inherited lands in its provision that no restricted lands of living minors shall be sold or encumbered, except by leases authorized by law, by order of court, etc. *Id.*
6. *Id.* Construing §§ 6 and 9 of Act of 1908, *held*, that proviso of § 9 refers only to adult full-blood heirs, and that probate court having jurisdiction over persons and property of minor full-blood heirs, but not of settlement of estate of deceased allottee from whom they inherited, was proper court to sanction conveyance of allotment made by their guardian. *Id.*
7. *Id.* *Guardianship.* General rule giving court of guardianship exclusive power to supervise ward's property, obtains in Oklahoma; intention to depart from it in act of Congress respecting lands of minor full-blood Indians not accepted unless clearly evinced. *Id.*
8. *Guardianship of United States; Right to Sue; Leases.* United States may enjoin assertion of rights under leases of restricted allotments obtained without conforming to statutes and administrative regulations, and enjoin negotiation of other unlawful leases in future. *La Motte v. United States* 570
9. *Act of 1906; Approval of Osage Leases; Regulations.* Secretary may not merely approve or disapprove leases after execution, but may make regulations prescribing in advance as conditions to approval mode in which they shall be executed and terms for protection of Indian lessors. *Id.*
10. *Id.* Section 7, in providing that leases shall be subject "only" to approval of Secretary, distinguishes between leases by individuals, to be approved by Secretary alone, and leases for tribe, which, under § 3, need sanction of tribal council as well. *Id.*
11. *Id.* *Minor Allottees; Guardianship.* Under § 7, construed with §§ 3 and 6 of Act of 1912, approval of Secretary is requisite to validity of leases of restricted lands of minor allottees or minor heirs, given by guardians with sanction of local courts in which guardianships were pending. *Id.*
12. *Id.* *Competency.* Under § 7, leases made by Indian parent having certificate of competency, or white parent

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not a member of tribe, on behalf of minor allottees or heirs, require Secretary's approval. *Id.*

13. *Id.* *Heirs.* Land allotted in right of deceased member cannot be leased by his heirs without Secretary's approval if they are members of tribe and without certificates of competency. *Id.*

14. *Id.* *Devise; Removal of Restrictions.* Devise of restricted allotment by will under § 8 of Act of 1912, approved by Secretary, operates as conveyance free of restrictions. *Id.*

15. *Id.* *Indefinite Restraint on Alienation.* Neither at common law nor under Oklahoma statutes may testator impose indefinite restriction on right of devisee to alienate land devised. *Id.*

16. *Lease After Removal of Restrictions.* Osage members, though without certificates of competency, may lease, without Secretary's approval, allotments purchased after such allotments had become unrestricted, since Acts of 1906 and 1912 do not reimpose restrictions once removed, or subject to restrictions all lands, however acquired, which members without such certificates may own. *Id.*

17. *Id.* *Co-tenants; Restricted and Unrestricted Interests; Form of Injunction.* Purchasers or lessees of unrestricted, undivided interests should be enjoined from exerting control over lands to exclusion of Indian co-tenants of restricted interests but not from dealing with their own interests. *Id.*

INDICTMENT. See **Criminal Law**, 5, 6.

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INJUNCTION. See **Anti-Trust Act**, 4-15; **Equity; Judgments**, 2; **Trusts and Trustees**, 12.

Right of United States to enjoin assertion of rights under leases of restricted allotments. See **Indians**, 8.

Id. Scope and form of injunction. See **Judgments**, 7.

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1. *Suicide; Sane or Insane and Incontestable Clauses*, of life policies, construed as implying that suicide of insured, sane or insane, after time specified, shall not be a defense. *Northwestern Mutual Life Ins. Co. v. Johnson* 96

2. *Id. Public Policy.* Validity of such agreements, even when death is due to suicide, if it occur after lapse of certain time, depends upon state public policy. Where it did not appear in what State contracts were made, the court upheld them, which, *semble*, is in accord with general rule. *Id.*

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Aliens; capacity to inherit. See **Treaties, 1-6.**

Admiralty; jurisdiction over vessel in service of foreign government. See **Admiralty, 2, 3.**

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1. *What Is?* Transmission of telegram between two States is interstate commerce as matter of fact; the fact must be tested by the actual transaction. *Western Union Tel. Co. v. Speight* 17
2. *Id.* Message routed through another State to destination in State of origin *held* interstate. *Id.*

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Sales Company Device. Agreement between coal and sales companies created and controlled by a railroad company, whereby sales company agreed to buy all coal produced by coal company at fixed percentage of New York prices and not to buy or sell coal except that purchased from coal company, *held* a mere device to evade commodities clause. *United States v. Lehigh Valley R. R.* 255

II. Shipper and Carrier. See III, *infra*.

1. *Foreign Commerce.* Section 1 applies to carrier engaged in transportation of persons or property from adjacent foreign country into United States as well as from the United States to an adjacent foreign country. *Galveston &c. Ry. v. Woodbury* 357
2. *Carmack Amendment; Limitation of Liability.* Where passenger traveling from Canada to Texas and return without express stipulation as to liability for loss of baggage, through fault of carrier lost her trunk in Texas on the journey out, *held*, that amount of recovery was limited under Carmack Amendment by published tariffs filed with Interstate Commerce Commission. *Id.*
3. *Id.* *Cummins Amendment* did not alter right of carrier under Carmack Amendment to limit by tariff amount of liability for baggage of passenger. *Id.*
4. *Bill of Lading; Diversion; Carmack Amendment.* Where shipment is purely intrastate and neither bill of lading nor state regulation gives right to divert, action of shipper and connecting carrier in forwarding goods, after arrival at des-

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tion, to new destination in another State under new bill, cannot impress original shipment with interstate character, subject it to Commerce Act and interstate tariffs, and so render initial carrier liable under Carmack Amendment for damage occurring under new consignment. *Bracht v. San Antonio & Aransas Pass Ry.* 489

5. *Discrimination; Rates.* Discrimination between shippers, otherwise violative of § 2 of act, cannot be justified by exigencies of competition between carriers. *Seaboard Air Line Ry. v. United States* 57

III. Powers and Proceedings of Commission.

1. *Switching Charges; Discrimination.* Finding of Commission that practice of carriers as to absorption of switching charges in transporting carload freight to and from Richmond was discriminatory between shippers, held not arbitrary nor beyond Commission's authority, and that order was not too vague and uncertain to be enforced. *Seaboard Air Line Ry. v. United States.* 57

2. *Id. Findings of Commission,* as to likeness of contemporary transportation services rendered to different shippers and as to substantial similarity of circumstances and conditions in which they were rendered, will not be disturbed by courts unless arbitrary or in excess of authority. *Id.*

3. *Jurisdiction; Classification.* Under Federal Control and Transportation Acts, changes in classification of commodity and in rules determining its acceptance for shipment are as fully within jurisdiction of Commission when proposed by Director General as if proposed by carrier. *Director General v. Viscose Co.* 498

4. *Id.* Amendment of freight tariff schedule, filed with Commission, canceling published classification and rates on silk and amending rule so as to include silk among articles not accepted for shipment, attempts both classification and change of regulation, the reasonableness of which, when challenged by a shipper, presents a question within exclusive initial jurisdiction of Commission. *Id.*

5. *Id.* Shipper complaining of changes should apply for relief to Commission; District Court is without jurisdiction, in first instance, to annul changes and enjoin carriers from complying. *Id.*

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state Commerce Acts, II, 2; III.

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Forfeiture; vehicles used for removal, etc., in defrauding United States of tax. See **Constitutional Law**, VIII, 4.

1. *Prohibition Act; Lawful Possession; Warehouses.* Liquors lawfully acquired and stored by owner prior to effective date of act in a room leased in public warehouse and so kept for his personal use, might lawfully be so stored after act became effective. *Street v. Lincoln Safe Deposit Co.* 88

2. *Id. Section 3; Possession and Delivery.* Warehouse owner did not "possess" such liquors, within § 3, nor would it "deliver" them, if it permitted removal to owner's dwelling for lawful use. *Id.*

3. *Id. Transportation, under Permit,* from warehouse to home of owner, is not unlawful. *Id.*

4. *Id. Eighteenth Amendment* indicates no purpose to confiscate liquors lawfully owned when it became effective and intended for lawful use. *Id.*

5. *Id. Unlawful Possession.* Section 25 does not apply to liquors stored by lawful owner in good faith for personal use; for that use is declared lawful by § 33. *Id.*

6. *Id. Place Where Manufactured, Sold, Kept; Nuisance under § 21.* Word "kept" means kept for sale or other commercial purposes. *Noscitur a sociis. Id.*

7. *Id. Intent to Confiscate* private property, even in intoxicating liquors, not raised by inference and construction from provisions which have ample field for other operation in effecting a purpose clearly indicated and declared. *Id.*

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Function and effect of railroad foreclosure decree, and rights of purchaser thereunder. See **Carriers**, 10.

1. *Original Cases. Interlocutory Decree*, defining state boundary and appointing commissioners to locate and designate it. *Minnesota v. Wisconsin* 14

2: *Effect of Decree in Subsequent Suit; Rates*. Decree of this court affirming without prejudice injunctive decree of state court upholding statutory railroad rate as non-confiscatory, determines adequacy of rate for period antedating decree, and is not superseded by decree in subsequent suit holding rate confiscatory upon new evidence. *Minneapolis &c. Ry. v. Merrick Co* 376

3. *Res Judicata; Decree in Another Circuit; Bill of Review*. When Circuit Court of Appeals has sustained a patent and remanded the case for accounting, party desirous of setting up a subsequent decree in another circuit as *res judicata* should petition the Circuit Court of Appeals for leave to file a bill of review in District Court, setting up new matter as bar to further proceedings. *National Brake Co. v. Christensen* 425

4. *Id. Discretion*. Such applications addressed to sound discretion of appellate tribunal. *Id.*

5. *Id. Close of Term*. Leave to file such bill of review may be granted after judgment of appellate tribunal and after going down of mandate at close of term. *Id.*

6. *Id.* Application held of that character, and not one to have the other decree pronounced *res judicata* by the appellate court. *Id.*

7. *Scope of Injunction; Indian Leases*. Injunction of purchasers or lessees of unrestricted, undivided interests in Osage allotments, from exercising control to exclusion of Indian co-tenants of restricted interests, should not be so broad as to prevent them from dealing with their own interests. *La Motte v. United States* 570

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8. *Id.*; *Trade-mark Infringement*. Use of "Coca-Cola" with accompanying pictures on labels, held not to constitute fraud depriving plaintiff of right to enjoin sale of like product under name of "Koke"; but injunction should not restrain use of "Dope," a featureless word not specifically suggestive of "Coca-Cola" by similarity or in use, nor forbid manufacture and sale of product, including coloring matter. *Coca-Cola Co. v. Koke Co.* 143

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2. *Inventions*; *Prior Art*. Court notices earlier forms of scaffolding used in construction of buildings, in determining invention. *New York Scaffolding Co. v. Liebel-Binney Co.* . . . 24
3. *Public Status of Vessel*. When it is claimed that ship is immune from process in libel for damages for collision, because in service of foreign government, the facts necessary to support claim, not being subjects of judicial notice, must be established. *Ex parte Muir.* 522

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4. *Id.* The inhibition does not forbid enjoining collection of judgment obtained in state court where its enforcement would be inequitable. *Id.*

5. *Local Questions.* Whether priority of State for payment of license taxes is a prerogative right or a rule of administration is a local question, the determination of which by highest court of State concludes federal courts. *Marshall v. New York* 380

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1. *Error or Appeal.* Mistake, in bringing up case by appeal instead of writ of error, is cured by Act of 1916, but act does not abolish distinction between two modes of review. *Ana Maria Sugar Co. v. Quinones* 245

(2) *Over Circuit Court of Appeals.* See III, *infra*.

2. *Writ of Error; Trading with Enemy Act.* Decrees affirming decrees of District Court, placing Alien Property Custodian in possession of property, reviewable by writ of error. *Central Union Trust Co. v. Garvan* 554

3. *Certiorari.* Refusal of Circuit Court of Appeals after it has sustained a patent for an invention and ordered an accounting, to grant leave to file bill of review in District Court setting up an adjudication in another circuit, is ancillary to original jurisdiction arising under patent laws, and is reviewable by certiorari. *National Brake Co. v. Christensen* 425

4. *First Circuit; Porto Rico; Assignment of Errors.* Where judgment of Supreme Court of Porto Rico in law action was assailed in Court of Appeals for error in measuring damages, but it appeared from opinion of former court that damages were allowed on other grounds not assigned as error in Court of Appeals and not there considered, *held*, that they could not be insisted upon as grounds for reversal by this court. *Ana Maria Sugar Co. v. Quinones* 245

(3) *Over District Court.* See IV, *infra*.

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of jurisdiction by District Court, where jurisdiction is merely in doubt and state of case is such that question may be reconsidered by District Court and on appeal. *Ex parte Muir* 522

6. *Direct Appeal; Jurisdiction as Federal Court*, necessary to support appeal under Jud. Code, § 238. *De Rees v. Costaguta* 166

7. *Id. Non-residents; Publication*. Such jurisdiction is not involved where jurisdiction is invoked against non-resident defendants under Jud. Code, § 57, to enforce lien on property within district, claimed to result from contract between them and plaintiff, and District Court quashes service by publication and dismisses bill, on ground that contract creates no lien. *Id.*

8. *Id. Merits and Jurisdiction*. Objection that District Court has no jurisdiction over indictment of Indian because defendant had been emancipated and act was committed on allotment in fee, goes not to jurisdiction, but to merits, and judgment of District Court is not reviewable by direct writ of error from this court. *Louie v. United States* 548

9. *Deciding All Questions*. Jurisdiction to decide other questions, after federal questions have been settled by decisions of this court rendered in other cases. *Geddes v. Anaconda Mining Co.* 590
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13. *Error or Appeal; Jud. Code, § 250, par. 3.* Judgment reviewable when it involves constitutionality as well as construction of act of Congress, though act be local to District of Columbia. *Id.*

(6) *Over State Courts.* See I, 3-5, *supra*.

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15. *Federal Question; When Really Decided.* Where judgment of state Supreme Court prohibiting proceedings in lower court in effect denies a substantive right claimed, the jurisdiction of this court to review on a constitutional ground is not affected by fact that in terms the prohibition is based on a denial of prohibited court's jurisdiction. *Id.*

16. *Local Question.* Whether State is bound by railroad foreclosure proceeding to which it voluntarily makes itself a party before final decree, is a local question. *Id.*

17. *Federal Question,* which has been settled and is no longer an open one in this court, no basis for writ of error. *Minneapolis &c. Ry. v. Merrick Co.* 376

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ting up a subsequent decree in another circuit as *res judicata* should petition Circuit Court of Appeals for leave to file bill of review in District Court, setting up new matter as a bar to further proceedings. *National Brake Co. v. Christensen*. 425

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3. *Id. Application held* of that character, and not one to have the other decree pronounced *res judicata* by the appellate court. *Id.*

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3. *Merits and Jurisdiction.* Objection that an Indian indicted for murder of another Indian on a reservation (Crim. Code, §§ 273, 328) was emancipated and that offense was on an allotment in fee, goes to merits and not to jurisdiction. *Louie v. United States* 548

4. *Amendment after Reversal on Demurrer.* Discretion to permit amendment of bill after reversal by Circuit Court of Appeals holding bill insufficient. *Wells Fargo & Co. v. Taylor*. 175

5. *Id.* Fact that Court of Appeals, in denying rehearing, refused to direct allowance of amendment, signifies merely that it sees no occasion to control District Court's discretion. *Id.*

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- Federal war power; legislation in aid of. See *id.*, V, 2, 3; IX, 3.
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- International bridges. See **Bridges**.
- Local law. See **Jurisdiction**, I, 5; II, 13, 16.
- Local rule; assumption of risk; when inapplicable. See **Employers' Liability Act**, 2.
- Public lands; lieu selections. See **Public Lands**.
- Public policy. See **Insurance**, 2.
- Railroads; relation to dismantling by purchaser at foreclosure sale. See **Carriers**, 9, 10.
- Reserved power; corporations. See **Constitutional Law**, IV.
- Id.* Privileges and immunities. See *id.*, VI.
- Residence; conspiracy to deprive of right of. See **Criminal Law**, 8.
- Resources; conservation. See **Constitutional Law**, IX, 6-9, 32, 33.

STATUTES. See **Admiralty**, 6-8; **Alien Enemies**; **Anti-Trust Act**; **Bankruptcy Act**; **Bridges**; **Carriers**, 2-7; **Chinese Exclusion Acts**; **Constitutional Law**; **Criminal Law**; **Employers' Liability Act**; **Indians**; **Interstate Commerce Acts**; **Intoxicating Liquors**; **Jurisdiction**; **Patents for Inventions**; **Public Lands**; **Safety Appliance Act**; **Sureties**; **Taxation**; **Trade-marks**.
Construction of treaties. See **Treaties**.

1. *Judicial Power.* Power to construe statute is necessary incident of power to determine constitutionality. *Heald v. District of Columbia*. 20
2. *Reenactment of Preëxisting Law.* *Jud. Code*, § 250, pars. 3, 6, must retain settled meaning attached to them before reenactment, in absence of plain implication to contrary. *Id.*
3. *Noscitur a Sociis.* Word "kept" as used in § 21 of National Prohibition Act, means kept for sale or other commercial purposes. *Street v. Lincoln Safe Deposit Co.* 88
4. *Intent to Confiscate* private property, even in intoxicating liquors, not implied from provisions which have ample

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field for other operation in effecting a purpose clearly indicated and declared. *Id.*

5. *Departure from General Rule*, giving court of guardianship exclusive power to supervise ward's property, in an act of Congress respecting lands of minor full-blood Indians, should not be accepted unless clearly evinced. *Harris v. Bell*..... 103

6. *Strict Construction*. Where statute imposes restriction upon equity powers of federal courts, and upon general operation of anti-trust laws, conferring special privilege upon particular class, rules of statutory construction forbid that privilege be enlarged by resorting to loose construction or by ignoring qualifying words. *Duplex Co. v. Deering*..... 443

7. *Legislative History*, of Clayton Act, shows that it was not intended to legalize secondary boycott. *Id.*

8. *Debates and Committee Reports*. In construing act of Congress, debates expressing motives of individual members may not be resorted to; but committee reports and explanatory statements by committee member in charge of bill may. *Id.*

9. *Safety Appliance Act*. In applying act courts will not weigh dangers incident to particular railway operations. *United States v. Northern Pac. Ry.*..... 251

STOCK. See **Taxation**, II, 8.

STOCK EXCHANGE. See **Bankruptcy Act**, 7.

STOCKHOLDERS. See **Corporations; Trusts and Trustees**, 4-12.

STREETS:

Grade crossings. See **Constitutional Law**, IX, 10-23, 37.

STRIKES. See **Anti-Trust Act**, 6-17.

SUBROGATION. See **Sureties**.

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SURETIES:

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1. *Subrogation to Priority of United States. Rev. Stats., § 3468*, giving surety which pays United States amount due on bond of insolvent debtor the priority enjoyed by United States over other creditors under § 3466, does not entitle surety to share equally with United States when estate is insufficient to satisfy claim of United States. *United States v. National Surety Co.* 73

2. *Id.* This is in harmony with rule under which surety liable only for part of debt does not become subrogated to remedies available to creditor unless he satisfies whole debt. *Id.*

SURPLUSAGE:

Indictment. See **Criminal Law**, 6.

SWITCHING. See **Interstate Commerce Acts**, III, 1, 2.

TARIFFS. See **Interstate Commerce Acts**, II, 2; III, 3-5.

TAXATION:

License fees. See **Constitutional Law**, II, 1; IX, 27, 28.
Id. Priority of State for payment. See **Priority**, 3.

I. Federal Taxation.

1. *Forfeitures; Rev. Stats., § 3450; Vehicles Used to Defraud United States of Tax.* An automobile so used by person who had it on credit from the owner, is subject to forfeiture, although the owner was without notice of the forbidden use. *Goldsmith-Grant Co. v. United States* 505

2. *Id. Fifth Amendment.* So construed and applied, statute does not deprive owner of property without due process. *Id.*

3. *Id. Sections 3460, 3461*, do not modify or affect § 3450 in this respect. *Id.*

4. *Refund. Right to Sue* is conditioned on prior appeal to and decision by Commissioner of Internal Revenue, after payment, and is not satisfied by an application for abatement of tax before it was paid. *Rock Island &c. R. R. v. United States.* 141

5. *Id. Legacies; Assessment.* In action for refund of taxes computed, returned and voluntarily paid by executors after July 1, 1902, on legacies paid over before that date, formal

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assessment prior to July 1, 1902, *held* not necessary to bring taxes within saving clause of Repealing Act of 1902 as taxes imposed prior to that date. *Cochran v. United States* 387

6. *Id. Life Estates; Trust Funds.* Such assessment not necessary to ascertain value, their value being ascertainable by computation upon mortality tables and rules of Commissioner of Internal Revenue. *Id.*

7. *Id. Unsettled Estate.* Estate's being unsettled and legatees and trustees possibly liable to refund if retained assets insufficient to pay claims, is no ground for recovery, where personal estate greatly exceeded amount of legacies, and total of claims and expenses of administration was comparatively insignificant. *Id.*

8. *Burden of Proof.* One who seeks to recover money voluntarily paid as tax, upon ground that tax was illegal, must prove its illegality and may not rely on mere assertion and speculation. *Id.*

II. State Taxation.

1. *Assessment; Notice and Hearing; Arbitration.* Assessment without notice or hearing, *held* invalid, where taxpayer's remedy by arbitration proved abortive because arbitrators, though agreeing assessment was excessive, could not unite on new assessment before expiration of time within which law required them to render decision, in consequence of which, under the law, original assessment stood affirmed. *Turner v. Wade* 64

2. *Exemption; Reserved Power Over Corporations.* Law granting tax exemption to terminal company properly construed by state courts as creating repealable privilege rather than contract right to exemption. *Troy Union R. R. v. Mealy* . . 47

3. *Income Tax; Foreign Corporations; Earnings Within and Without State.* Tax based on proportion of net profits earned within State, the enforcement of which is left to ordinary means of collecting taxes, does not violate commerce clause. *Underwood Typewriter Co. v. Chamberlain*. 113

4. *Id.* In considering whether tax on locally-earned income reaches income earned outside the State, it is not necessary to decide whether it is a direct tax on income or an excise measured by income. *Id.*

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5. *Id. Computing Tax.* Tax on income of corporation manufacturing within State but deriving greater part of its receipts from sales outside, computed by taking proportion of total net income which proper value of real and personal tangible property within bears to that outside, *held* not unreasonable. *Id.*

6. *Id. Foreign Corporations.* Principle that State may not impose discriminatory tax on sister-state corporation which had made large permanent investments in State before tax law was enacted, *held* inapplicable to case involving non-discriminatory tax on locally-earned income of manufacturing corporation. *Id.*

7. *Inheritance Tax; Classification.* State may distinguish between property which has borne fair share of tax burden in decedent's lifetime and property of same kind which has not. *Watson v. State Comptroller.* 122

8. *Id. Transfer of Securities; New York Law.* Additional tax on transfer of certain kinds of securities held by decedent at his death on which neither general property tax nor alternative stamp tax has been paid during fixed period prior thereto, is based upon reasonable classification. *Id.*

9. *Id.* Tax is neither a property tax nor a penalty. *Id.*

TELEGRAPH COMPANIES:

Adjustment of lines on change of railroad grade crossing.
See **Constitutional Law**, IX, 22.

1. *Interstate Commerce.* Transmission of telegram between two States is interstate commerce as matter of fact; fact tested by actual transaction. *Western Union Tel. Co. v. Speight* 17

2. *Id. Mental Anguish.* Where recovery hung on interstate character of message, *held* that message routed through another State to destination in State of origin was interstate. *Id.*

3. *Burden of Proof.* If motive, in so routing message, to evade jurisdiction of State of origin were material, it was error to lay burden on defendant of disproving it. *Id.*

TEXAS. See **Procedure**, I, 2, 3.

TITLE. See **Alien Enemies**, 4; **Claims**, 6; **Constitutional PAGE**
Law, VIII, 4; **Indians**; **Trusts and Trustees**, 2.
 By purchase. See **Indians**, 3.

TOLLS. See **Bridges**, 1, 2.

TORTS. See **Claims**, 7; **Employers' Liability Act**; **Master and Servant**; **Negligence**; **Telegraph Companies**, 2.

TRADE-MARKS. See **Judgments**, 8.

1. *Injunction; Infringement and Unfair Competition; Fraud and Unclean Hands.* That trade-mark conveys fraudulent representations to public affords but a narrow ground for refusing relief against infringer who seeks to reap advantages of plaintiff's good will. *Coca-Cola Co. v. Koke Co* . . . 143

2. *Id.* As respects this defense, plaintiff's position must be judged by facts when suit was begun, not of a different condition and earlier time. *Id.*

3. *Id.* Use of "Coca-Cola" with accompanying pictures on labels, *held* not to constitute fraud depriving plaintiff of right to enjoin infringement and unfair competition in selling like product under name of "Koke." *Id.*

TRADING WITH THE ENEMY ACT. See **Alien Enemies**; **Jurisdiction**, II, 2; IV, 7.

TRANSPORTATION ACT, 1920. See **Interstate Commerce Acts**, III, 3.

TREATIES:

1. *Inheritance by Aliens.* In absence of treaty capacity to inherit land within State of the Union depends upon law of that State. *Sullivan v. Kidd* . . . 433

2. *Id.* *Treaty with Great Britain; Application to Canada.* Treaty of 1899 requires notice to bring foreign possessions within provisions granting rights of inheritance and enable subjects resident in the Dominion to inherit land in United States. *Id.*

3. *Id.* Fact that Canada, as self-governing dependency, has granted aliens right to inherit, cannot affect construction of treaty. *Id.*

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4. *Id.* "Most Favored Nation Clause." Held not to extend rights acquired by treaties containing it because of reciprocal benefits expressly conferred in treaties with other nations in exchange for rights or privileges given to our Government. *Id.*

5. *Id.* Such clause in Treaty of 1899 does not control specific condition upon right of citizens of foreign possession to participate in its benefits. *Id.*

6. *Aids to Construction.* Little weight attached to construction by Great Britain of earlier treaty with Japan but which was not made known to representative who negotiated treaty in question for this country. *Id.*

7. *Id.* Construction by Executive, consistently adhered to, should be given much weight by courts. *Id.*

8. *Principles of Construction.* Like written contracts between individuals, all parts of treaty considered with view to giving fair operation to whole; they are to be executed in utmost good faith to effectuate purposes of parties. *Id.*

TRIAL. See **Criminal Law**, 3, 4; **Evidence**, 5; **Exceptions**; **Master and Servant**, 2.

1. *Directed Verdict; Right to Jury.* When party joining in request for peremptory instruction may reserve right to go to jury. *Sampliner v. Motion Picture Co* 233

2. *Id.* *Findings.* Court cannot ignore reservation and assume to find facts from evidence as though case unconditionally submitted. *Id.*

TRUST DEED. See **Receivers**, 1.

TRUSTS AND TRUSTEES. See **Taxation**, I, 5-7.

1. *Creation.* Particular words unnecessary; certainty as to property, objects and beneficiaries required. *Chicago &c. Ry. v. Des Moines &c. Ry* 196

2. *Id.* *Legal Title*, must be in trustee, where subject is legal interest capable of legal transfer. *Id.*

3. *Id.* *Several Instruments*, read together to establish intention. *Id.*

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4. *Railroad Terminal Company*, deriving its property from railroads which created it to serve their common use, taking its shares, etc., in proportion to their contributions, *held* not an independent concern but a trustee, bound to use property and to exercise its corporate powers for the railroads as beneficiaries. *Id.*

5. *Id. Significance of Shares*. Represent merely right of participation in use of terminal under the trust, and have no independent exchangeable value, at least in hands of purchaser with notice of trust. *Id.*

6. *Id. Officers*. Fiduciary character of terminal *held* to extend to its officers and directors. *Id.*

7. *Id. Estoppel*. Sale by railroad of shares in terminal company to officers of latter, for value, to enable them to sell them to company capable of participating in use of terminal, does not estop successor of vendor from denying that vendees acquired substantial interest in terminal and seeking to enjoin inequitable use of such shares. *Id.*

8. *Id. Unauthorized Amendment of Articles*. Officers of proprietaries authorized to vote their terminal stock may not amend articles of terminal company so as to terminate trust. *Id.*

9. *Id. Evidence*. Absence of reference to trust in deeds of property, including terminal shares, made by proprietaries, and in contracts made by terminal in discharging functions, is not persuasive evidence against existence of trust. *Id.*

10. *Id. Estoppel; Laches; Notice*. Unauthorized amendment of articles in purport discharging trust, unchallenged for 17 years, *held* not to estop, or bar for laches, successors of proprietaries from asserting trust against officers and directors of terminal company, who for value acquired from proprietaries majority of terminal shares. *Id.*

11. *Id.* Fiduciaries holding such shares are estopped to avail themselves of negligent or mistaken acts of officers of the railroad companies to obtain advantage. *Id.*

12. *Id. Injunction*. Such shares represent no interest which fiduciaries could set up against proprietaries; latter, upon repaying what former had paid for them, with in-

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terest, may have shares surrendered and canceled, and meanwhile prevent sale or voting thereof by injunction. *Id.*

13. *Accounting. Earnings* from switching and other terminal services credited to proprietaries in proportion to their use of terminal. *Id.*

14. *Receivers; Liability for Profits.* Persons who knowingly join with receiver in purchasing real estate at sale by trustee of deed of trust mortgage securing debt due receivership, are jointly and severally liable to receivership for all profits realized from purchase. *Jackson v. Smith* 586

UNFAIR COMPETITION. See *Anti-Trust Act; Interstate Commerce Acts, I; Trade-marks.*

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Contracts. See *Jurisdiction, IV, 1, 2.*
War power. See *Constitutional Law, V; IX, 3.*
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Agents; Crim. Code, § 41. See *Emergency Fleet Corporation, 2.*
Debts due United States; priority. See *Sureties.*
Right to enjoin assertion of rights under leases of restricted allotments. See *Indians, 8.*

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WAR REVENUE ACT, 1898. See *Taxation, I, 5-7.*

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